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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

RICHELLE and CHRISTOPHER  
LEATHEM, Individually and as parents  
Of PEYTON LEATHEM, a minor,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:10-\_\_\_\_\_ CV

**COMPLAINT**

Plaintiffs, by and through counsel of record, Cooke Roosa, LLC, hereby claim and allege as follows:

1. Plaintiffs are residents of the State of Alaska.
2. The acts or omissions upon which this cause is based occurred in Anchorage, Alaska.
3. This suit is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2674, and this court has exclusive jurisdiction over this action pursuant to 28 U.S.C.

§ 1346(b). Venue in this District is authorized by 28 USC § 1402(b).

4. As required by 28 U.S.C. § 2675, notice of the plaintiffs' claims was received by the U.S. Air Force on May 14, 2009. (Exhibit 1.)

5. The claims were denied by the Chief of the Medical Law Branch, on December 8, 2009. On May 11, less than six months after the denial was issued, the proper authorities at the U.S. Air Force Claims and Tort Litigation Division received a timely request for reconsideration, thereby extending by six months the deadlines for filing a complaint in this case. (Exhibit 2.) Accordingly, this complaint is timely filed.

6. The Elmendorf Air Force Base Hospital (EAFB Hospital) is operated and staffed by the 3rd Medical Group, a component of the United States Air Force, Department of Defense. Uniformed health care providers at EAFB Hospital are employees of the United States, and the United States is liable for their negligent acts within the scope of their employment.

7. Richelle and Christopher Leathem are adults. Peyton Leathem is their biological daughter. Peyton Leathem was born on December 21, 2008.

8. On December 21, 2008, shortly after midnight, Richelle Leathem, wife of Christopher Leathem, gave birth to twins at the Elmendorf Air Force Base Hospital, operated and staffed by the 3<sup>rd</sup> Medical Group. By 15 minutes after her birth, Peyton, the second born of the twins, demonstrated grunting and retractions. She was placed under hood oxygen, but was unable to be weaned below 50-60% to keep oxygen saturations in the mid-90 percent range.

9. Fearing possible infection, Peyton was given ampicillin and gentamicin and transferred to Providence Alaska Medical Center (PAMC). During her transport to the Neonatal Intensive Care Unit (NICU) at PAMC, transport personnel realized that hospital personnel at Elmendorf had negligently administered to Peyton 10 times the recommended dosage of gentamicin, placing her at risk for long term kidney damage and hearing loss.

10. Peyton was diagnosed at PAMC with drug toxicity, iatrogenic anemia, and thrombocytopenia. Due to the overdose, she was kept in the NICU for 10 days, during which time she underwent hemodialysis and overdose detoxification. Her kidney function is currently normal but prognosis is uncertain. She may have sustained permanent hearing loss.

#### COUNT I

11. Medical personnel employed by EAFB Hospital, including doctors interns, and nurses, breached the applicable standards of care and were negligent in providing medical care to plaintiff Peyton Leathem. The negligence of these care providers includes, but is not limited to, failure to properly calculate the correct dosage of gentamicin, negligent administration of a drug overdose, and failure to timely recognize their errors, all of which proximately caused her present and future injuries.

12. As a direct and proximate result of the negligence of the defendant described above, plaintiff Peyton Leathem has suffered past and future damages including, but not limited to: 1) scarring 2) probable kidney damage and probable hearing loss; 3) loss of

enjoyment of life; 4) medical, rehabilitative, and life care expenses; 5) future wage loss; and 6) and other economic and non-economic losses, including but not limited to loss of insurability, all to her damage in excess of \$100,000.00, the exact amount to be determined at trial.

## COUNT II

13. The preceding paragraphs of this complaint are hereby incorporated by reference as if herein stated.

14. As a direct and proximate result of the negligence of the defendant described above, plaintiff Richelle and Christopher Leathem has suffered past and future damages including, but not limited to: 1.) loss of consortium; 2.) emotional distress (NIED); 3.) economic losses (wage losses, loss of insurability, increased life, educational and medical care expenses) ; and 4.) other economic and non-economic losses all to their damage in excess of \$100,000.00, the exact amount to be determined at trial.


WHEREFORE, the plaintiffs, and each of them, pray for relief as follows:

A. An amount in excess of One-hundred Thousand Dollars (\$100,000.00), the exact amount to determined at trial;

B. For costs and such other and further relief as this court deems just and equitable.

DATED at Anchorage, Alaska this 9<sup>th</sup> day of November 2010.

Cooke Roosa, LLC  
Attorneys for Plaintiffs

By:   
Kenneth S. Roosa

**Initial Service upon:**

Attorney General Eric Holder  
Office of the U.S. Attorney General  
U.S. Department of Justice  
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